IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION No.4876 OF 2003

Vijay Pinto ...Petitioner

Versus

Madhavlal N.Pittie, Esq ...Respondent

Mr.Dinkar Rao for petitioner

Mr.M.S.Doctor i/b M/s.D.J.Kamdin & Co. for respondent

CORAM : P.V.KAKADE, J.

DATE : 18TH JANUARY 2006.

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. Rule. Rule made returnable forthwith by consent.

3. This petition is preferred against the order passed by Small Causes Court, Mumbai in Int. Notice No.3257 of 2002 in RAE Suit No.777/1589 of 1996 whereby the amendment application of the plaintiff came to be allowed.

. The plaintiff filed the suit for recovery of possession against the defendant and it was submitted that certain facts came to his knowledge from written statement of the defendant in RAE Suit No.5203 of 1985. However, during the pendency of that suit and present suit it was alleged that one Ekbal and Chaturbhuj Sharma had been inducted illegally into suit premises, and part thereof was subletted to them. Inspite of in Notice Order of Injunction passed on 20.10.2000, during talks, Vijay Pinto handed over the copies of deeds of partnership, which also revealed certain material facts. It was further stated that the plaintiff is Receiver of the properties in which the suit premises is located and therefore, it was necessary and in the interest of justice to amend the plaint from effective conclusion that the trial had not began and proposed amendment according to the applicant

would not change the nature of the suit and on such and other grounds it was prayed that the the application be allowed.

4. The defendant challenged the move for amendment of the plaint on various ground, inter alia, submitting that there was no relationship of landlord and tenant and therefore the court had no jurisdiction to try and entertain the suit and consequently the amendment could not be permitted. After hearing both the parties the learned trial judge was of the that the amendment was necessary and application came to be allowed. Hence the present petition.

5. At the outset, it may be noted that the learned counsel for the petitioner vehemently urged that there was no relationship of landlord and tenant and therefore, the small causes court had no jurisdiction to try and entertain the suit. In support of this submission he sought to put reliance on the ruling in the case of Pandit Rudranath Mishir and Ors. vs. Pandit Sheo Shankar Missir and Ors. reported in AIR 1983 PATNA 53 of which the ratio was to the effect that the court having no jurisdiction to entertain the suit cannot allow amendment of the plaint.

However, in my considered view, the issue whether there existed any relationship between the parties as landlord and tenant would be the issue of merits and cannot be gone into at this stage and therefore, it cannot be said that the Small Causes Court had no jurisdiction to entertain the suit, in this writ petition.

6. Apart from this aspect, it is to be noted that the defendant in the suit is Partner of Hindustan Motor Driving School and has proposed to join others as party defendants to the suit by way of amendment and therefore, it cannot be said that the proposed party would be stranger in any manner whatsoever. On perusal of the reasoning adopted by the Lower Court, it appears that the amendment is granted on the ground that it does not change the nature of the suit or relief claimed by the party and therefore, it is necessary to determine the real question and controversy between the parties. I fully agree with this aspect when it is apparent that no prejudice would be caused to the petitioner if the amendment is to be allowed, which is quite relevant and proper in order to have effective adjudication of the dispute between the parties.

7. Therefore, in view of this position, I do not see any merits in the petition and petition stands dismissed with no order as to costs.

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